

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 115 OF 2006
WITH
CIVIL APPLICATION NO. 290 OF 2006

Shri Subhash Sambhaji Pawar ..Appellant
Vs.
Shri Dattatray Hiranman Sonawane
and ors. ..Respondents

Mr. S.M. Sabrad for appellant.
Mr. Anilkumar Patil for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : June 11, 2007.

P.C.:

1. Heard Mr. Sabrad the learned counsel for the appellant-original defendant no.3 and Mr. Anilkumar Patil the learned counsel for the respondent nos.1 and 2 who were the original plaintiffs. Present respondent no.3 was defendant no.1 and respondent nos.4 and 5 were defendant nos.2 and 4 in Regular Civil Suit No. 273 of 1992.

2. The plaintiffs being the minor sons of defendant no.1 had challenged the sale of suit land located in Gat No. 193 and admeasuring 1 H. 53 R.

It was stated that the defendant no.1 sold 1 H. 21 R out of the total holding of 1 H. 53 R. land from Gat No. 193 by registered sale deed dated 7/5/1992 to defendant no.3 for a consideration of Rs.24,000/- and he was addicted to drinks and there was no legal necessity when the land was sold. The plaintiffs, therefore, sought a declaration that the sale deed dated 7/5/1992 was illegal.

3. The trial court decreed the suit partly and held that the plaintiffs were entitled for 5/16 share in the suit house No.357 of Yesgaon, Taluka Malegaon and separate possession thereof. Defendant No.1 Hiranman was perpetually restrained from transferring suit house No.357 and the prayer for cancellation of the sale deed in respect of the agricultural land was rejected. The plaintiffs, therefore, filed Civil Appeal No. 58 of 2000 and the same came to be allowed by the learned 1st Ad-hoc Additional District Judge at Malegaon vide his judgment and order dated 27/9/2005. The decree passed by the Lower Appellate Court reads as under:-

(a) The plaintiffs are entitled to partition and separate possession of their 5/12 share each out of the suit lands bearing Gat No. 193 and admeasuring 1 H. 53 R as well as house property bearing No. 357 situated at village Yesgaon, Taluka Malegaon, Dist. Nashik.

(b) Partition of the agricultural land be effected through the Collector or his subordinate officer and subject to land-laws.

(c) It is hereby declared that sale-deed dated 7/5/1992 bearing No. 1265/23-280/263 is not binding on the share of the plaintiffs.

(d) Defendants are also hereby perpetually restrained from creating any encumbrances on the suit property or alienating the suit property together with the share of the plaintiffs.

4. The Lower Appellate Court held that the suit property was not sold for the legal necessity or for the benefit of the estate of the joint family and the minors and, therefore, decree in the suit. On this issue, the Lower Appellate Court is at variance with the trial court. It considered the depositions of defendant no.1 - Hiranman, defendant no.3 - present appellant as well as Sakhubai, a witness examined on behalf of the plaintiffs. Sakhubai had stated in her depositions that defendant no.1 had sold the suit property without any family necessity or without any legal necessities and he did not obtain any consent from the plaintiffs. It was also noted from the 7x12 extract of the suit land that there was no encumbrances by way of any loan/hypothication or charge of any kind on the said land. Defendant No.3 in his depositions stated that defendant no.1 was the manager of the family and he had informed him that the suit land was required to be sold for the legal necessity of the family. In his oral depositions the defendant no.1 had stated that the land was sold because of the financial necessity on account of two reasons, namely, (a) digging of a well and (b)

education of the plaintiffs-minors Dattatray and Hari. The Lower Appellate Court noted on the basis of the evidence adduced before the trial court that the suit land already had a well for irrigation as was noted in the 7x12 extract and the minor sons had not gone to any school. It was for all these reasons, the Lower Appellate Court recorded a finding that the suit land was not sold for any legal necessity or for the bonafide requirement of the family and consequently decreed the suit by declaring that the sale deed in favour of defendant no.3 was illegal and in contravention of the requirements of Section 8 of the Hindu Minority and Guardianship Act, 1956.

6. Hence, this second appeal does not raise any substantial question of law for the consideration of this court. Therefore, the appeal is dismissed in limine. However, it is clarified that the appellant's sale deed to the extent of the share of defendant no.1 shall be valid and enforceable accordingly.

7. Civil Application No. 290 of 2006 does not survive and the same shall stand disposed as such.

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(B.H. Marlapalle, J.)